



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

SEP 11 2009

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In Reply: AIR-5
Refer To: Docket No.'s R9-09-17
R9-09-18
R9-09-19

Kevin J. Hunt, President
Ralcorp Holdings, Inc.
800 Market Street, Suite 2600
St. Louis, MO 63101

Re: Cottage Bakery, Inc.
Lodi, California

Dear Mr. Hunt:

Enclosed for your information is a copy of a Finding of Violation ("FOV") and two Notice of Violations ("NOVs") issued by the United States Environmental Protection Agency ("EPA") to Cottage Bakery, Inc. ("Cottage Bakery"), concerning the operation of its bakery production facility in Lodi, California ("the Facility"). Cottage Bakery is a business segment of Ralcorp Frozen Bakery Products, Inc., a division of Ralcorp Holdings, Inc. ("Ralcorp"), and is located within the jurisdiction of the San Joaquin Valley Air Pollution Control District ("District").

The FOV has been issued because the Facility is a major source and it failed to apply for and obtain a Title V operating permit. The NOVs have been issued to address alleged violations of Rules 2010 ("Permits Required"); 2201 ("New and Modified Stationary Source Review Rule"); and 4693 ("Bakery Ovens"). Each of these rules is in the District's portion of the California State Implementation Plan. The NOVs allege that the Facility: (i) violated Rule 2010 by failing to obtain appropriate permits prior to construction and operation of emissions units; (ii) violated Rule 2201 by failing to comply with Best Available Control Technology and offset requirements; (iii) violated Rule 4693 by failing to vent bakery oven emissions to an approved emission control device.

If you wish to discuss the FOV and NOV's, you may request a conference with EPA. The conference would afford Cottage Bakery and Ralcorp an opportunity to present information bearing on the finding of violation, the nature of the violation, any efforts you have taken to achieve compliance, and the steps you propose to take to achieve compliance.

Please contact Kara Christenson, Office of Regional Counsel, at (415) 972-3881, to request a conference. Such request should be made as soon as possible, but in any event no later than 10 working days after receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan", with a long, sweeping horizontal line extending to the right.

Deborah Jordan
Director, Air Division

Enclosures

cc: Mr. Seyed Sadredin, APCO, San Joaquin Valley Air Pollution Control District
Mr. James Ryden, Chief, Enforcement Division, California Air Resources Board
Tim Wiese, Ralcorp Holdings, Inc.
Russ Haswell, Ralcorp Holdings, Inc.
Steven Poplawski, Bryan Cave LLP
Susannah Mitchell, Bryan Cave LLP

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of:)	Docket No. R9-09-17
)	
Cottage Bakery, Inc.)	Finding and Notice of Violation
Lodi, California)	
)	
Proceeding Under Section 113(a),)	
<u>Clean Air Act, As Amended</u>)	

This Finding and Notice of Violation (“NOV”) is issued to Cottage Bakery, Inc. (“Cottage Bakery”) for violations of the Clean Air Act (“CAA” or “Act”) as amended, 42 U.S.C. §§ 7401-7671q, at its manufacturing facility located in Lodi (San Joaquin County), California (the “Facility”). The Facility is located within the jurisdiction of the San Joaquin Valley Air Pollution Control District (“SJVAPCD” or “District”).¹ This FOV is issued under the authority and at the discretion of the Director of the Air Division for EPA, Region IX.²

GENERAL STATUTORY AND REGULATORY BACKGROUND

Title V Operating Permit Program Requirements

1. Title V of the Act requires major stationary sources of air pollution to obtain an operating permit that includes emissions limitations and such other conditions as necessary to assure compliance with applicable requirements of the Act. See 42 U.S.C. §§ 7661a-7661f. EPA’s regulations implementing

¹ San Joaquin County is classified as a “severe” non-attainment area under EPA’s 1997 8-hour ozone National Ambient Air Quality Standard (“NAAQS”) and as an “extreme” non-attainment area under EPA’s 1-hour ozone NAAQS. 40 C.F.R. §81.305. See also, 69 Fed. Reg. 20550 (April 16, 2004). In addition, on August 27, 2009, EPA proposed to grant a request by the State of California to reclassify the San Joaquin Valley area (including San Joaquin County) from “serious” to “extreme” with regard to EPA’s 1997 8-hour ozone NAAQS. 74 Fed. Reg. 43654 (Aug. 27, 2009).

² Section 113(a)(1) requires the Administrator of the EPA to notify a person in violation of a state implementation plan. This FOV alleges violations of Title V; therefore, it is not a statutory prerequisite to enforcement. We are issuing this FOV to provide Ralcorp with notice of EPA’s findings of non-compliance at the Facility.

the Title V operating permit program are found at 40 C.F.R. Part 70. See 57 Fed. Reg. 32250 (July 21, 1992).

2. The District adopted Rule 2520 to implement Title V on June 15, 1995. EPA granted interim approval to the District's Title V program effective May 24, 1996 and granted full approval effective November 30, 2001. 40 CFR Part 70, Appendix A; 66 Fed. Reg. 63503 (December 7, 2001).
3. The District's Title V program defines a major stationary source as including a source with the potential to emit more than 50,000 pounds (25 tons) per year of volatile organic compounds ("VOCs").³ SJVAPCD Rule 2520, §3.19 and Rule 2201, §3.25.
4. The District's Title V program requires a major source to submit a Title V permit application within 12 months after becoming subject to the permit program. SJVAPCD Rule 2520, §5.1.
5. EPA's regulations, at 40 CFR §70.5(a), provide that the owner or operator of a title V source must submit a timely and complete permit application. Section 70.5(a)(1) further provides that a timely and complete application is one submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.
6. Section 502(a) of the Act provides that, after the effective date of a Title V permit program, operation of a major stationary source without a Title V operating permit is a violation of the Act. 42 U.S.C. §7661a(a).

FINDINGS OF FACT

7. The Facility is a commercial bakery facility located at 1831 S. Stockton Street, Lodi, California. The Facility has existed at this location since at least 1997. The Facility is capable of operating 24 hours per day, 7 days per week, 52 weeks per year.
8. Until November 2006, the Facility was owned by the Knutson Family Trust and several charitable organizations. In November 2006, ownership and operation of the Facility was transferred to Ralcorp

³ Ground-level ozone is formed when VOCs react with nitrogen oxides ("NOx") in the presence of sunlight. As precursors to ozone, VOCs are regulated pollutants.

Holdings, Inc. Currently, the Facility is owned and operated by Ralcorp Frozen Bakery Products, Inc. ("RFBP"), a division of Ralcorp Holdings, Inc.

9. On or about August 12, 2009, RFBP submitted an application for a permit to operate to the District ("Permit Application").
10. RFBP's Permit Application stated that the Facility operates natural gas fired bakery ovens and one cake oven. RFBP's Permit Application also states that the ovens were installed at various times between 1997 and 2006.
11. RFBP's Permit Application also states that the Facility has one boiler, which is rated at 4.95 MMBtu.
12. RFBP's Permit Application states that the Facility makes baked breads and cakes. The bread dough uses yeast for sandwich bread and levain for artisan breads. VOCs are emitted when the bread is baked. VOC-containing flavorings are added to the cake batter and VOCs are emitted when the cake is baked.
13. RFBP's Permit Application states that the Facility's potential to emit VOCs is 124.4 tpy. RFBP's Permit Application also states that the Facility emitted 31.24 tons of VOCs in 2008 from the bread products.
14. RFBP's Permit Application states that the Facility has no permitted emission units.

FINDINGS OF VIOLATION

Finding of Failure to Submit a Timely Title V Permit Application and Finding of Operation of a Major Source without a Valid Title V Permit

15. The Facility is a major source of air pollution, as that term is defined in the District's Title V program.
See, SJVAPCD Rule 2520, §3.19 and Rule 2201, §3.25.
16. The Facility was required to have submitted a Title V permit application no later than 12 months after becoming subject to the program.
17. The Facility has not submitted a Title V permit application.

18. The Facility has been operating as a major source of air pollution without a valid Title V permit.
19. The Facility is in violation of section 502 of the Act, 40 C.F.R. §70.5(a), and SJVAPCD Rule 2520, §5.1.
20. The Facility will continue to be in violation of section of 502 of the Act, 40 C.F.R. §70.5(a), and SJVAPCD Rule 2201, §5.1 until it obtains a valid Title V permit or a valid limit on its potential to emit.

NOTICE OF VIOLATION

Notice is given to Cottage Bakery, Inc. that the Administrator of the United States Environmental Protection Agency, by authority duly delegated to the undersigned, finds that Cottage Bakery, Inc. is in violation of section 502 of the Act and its implementing regulations, as set forth in the Findings of Violation.

ENFORCEMENT

Section 113(a)(3) of the Act provides that when any person has violated any requirement or prohibition of Title V of the Act, EPA may:

- issue an order requiring compliance with such requirement or prohibition, or
- issue an administrative penalty order pursuant to section 113(d) for civil administrative penalties of up to \$37,500 per day of violation, or
- bring a civil action pursuant to section 113(b) for injunctive relief and/or civil penalties of not more than \$37,500 per day for each violation.

Furthermore, if a person knowingly violates requirements relating to Title V, section 113(c) provides for criminal penalties or imprisonment, or both.

Under section 306(a) of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full

compliance with the Act and all regulations promulgated pursuant to it. Violations of the Act may result in the facility being declared ineligible for participation in any federal contract, grant, or loan.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that the Administrator or the court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113(e)(2) of the Act allows the Administrator or the court to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this FOV, the days of violation shall be presumed to include the date of this FOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

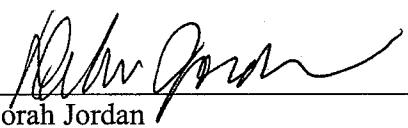
OPPORTUNITY FOR CONFERENCE

Cottage Bakery may, upon request, confer with EPA. The conference will enable Cottage Bakery to present evidence bearing on the finding of violation, the nature of the violation, and any efforts it may have taken or proposes to take to achieve compliance. Cottage Bakery has the right to be represented by counsel. A request for a conference with EPA must be made within ten (10) working days of receipt of

this FOV. The request for a conference or other inquiries concerning the FOV should be made in writing to:

Kara Christenson
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3881

9-10-09
Date


Deborah Jordan
Director, Air Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of:)	Docket No. R9-09-18
)	
Cottage Bakery, Inc.)	Finding and Notice of Violation
Lodi, California)	
)	
Proceeding Under Section 113(a),)	
<u>Clean Air Act, As Amended</u>)	

This Finding and Notice of Violation (“NOV”) is issued to Cottage Bakery, Inc. (“Cottage Bakery”) for violations of the Clean Air Act (“CAA” or “Act”) as amended, 42 U.S.C. §§ 7401-7671q, at its manufacturing facility located in Lodi (San Joaquin County), California (the “Facility”). The Facility is located within the jurisdiction of the San Joaquin Valley Air Pollution Control District (“SJVAPCD” or “District”). Section 113(a)(1) of the Act requires the EPA Administrator to notify a person in violation of a state implementation plan. The authority to issue NOV’s has been delegated to the Director of the Air Division for EPA, Region IX.

GENERAL STATUTORY AND REGULATORY BACKGROUND

1. Section 110(a) of the Act requires that all states adopt state implementation plans (“SIPs”) that provide for the implementation, maintenance and enforcement of primary and secondary air quality standards. 42 U.S.C. §7410(a).
2. Pursuant to Section 107(d) of the Act, 42 U.S.C. §7407(d), the Administrator has promulgated lists of attainment status designations for each air quality control region (“AQCR”) in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for California AQCRs are listed at 40 C.F.R. §81.305.
3. The Facility is located in San Joaquin County, which is within the jurisdiction of the San Joaquin

Valley Air Pollution Control District (“SJVAPCD” or “District”). San Joaquin County is classified as a “severe” non-attainment area under EPA’s 1997 8-hour ozone National Ambient Air Quality Standard (“NAAQS”) and as “extreme” non-attainment area under EPA’s 1-hour ozone NAAQS. 40 C.F.R. §81.305. See also, 69 Fed. Reg. 20550 (April 16, 2004). In addition, on August 27, 2009, EPA proposed to grant a request by the State of California to reclassify the San Joaquin Valley area (including San Joaquin County) from “serious” to “extreme” with regard to EPA’s 1997 8-hour ozone NAAQS. 74 Fed. Reg. 43654 (Aug. 27, 2009).

4. Section 182(b)(2) of the Act requires states to have SIP rules that require all major sources of VOCs located in ozone non-attainment areas classified as moderate and above to implement Reasonably Available Control Technology (“RACT”).¹ 42 U.S.C. §7511a(b)(2).
5. A person’s failure to comply with any approved regulatory provision of a SIP renders the person subject to enforcement under section 113 of the Act. 42 U.S.C. §7413(a)(1); 40 C.F.R. §52.23.

SJVAPCD Rule 4693 Bakery Ovens

6. In accordance with Section 110 of the Act, EPA has approved Rule 4693 (Bakery Ovens) as adopted on May 16, 2002, into SJVAPCD’s portion of the California SIP. 69 Fed. Reg. 22441 (April 26, 2004).
7. Section 2.0 of Rule 4693 provides: “The requirements of this rule shall apply to bakery ovens operated at major source facilities, which emit VOCs during the baking of yeast-leavened products.”
8. Section 3.1 of Rule 4693 defines “bakery oven” as: “[A]n enclosed compartment supplied with heat, typically from the combustion of natural gas, used to bake bread, buns and rolls....”
9. Section 3.4 of Rule 4693 defines “leaven” as: “[A] rise in the dough caused ... a fermentation-producing agent such as yeast.”

¹ Ground-level ozone is formed when volatile organic compounds (“VOCs”) react with nitrogen oxides (“NOx”) in the presence of sunlight. As precursors to ozone, VOCs are regulated pollutants.

10. Section 3.5 of Rule 4693 defines a “major source” as defined in Rule 2201 (New and Modified Stationary Source Review Rule). Section 3.25 of Rule 2201 defines a major source as one having a potential to emit greater than 50,000 pounds of VOCs annually. Section 3.36 of Rule 2201 defines a “stationary source” as “any building, structure, facility, or installation which emits or may emit any affected pollutant [defined as including VOCs, per Rule 2201, section 3.4] directly or as a fugitive emission.”
11. Section 3.2 of Rule 4693 defines an “existing Oven” as: “[A]n oven that was constructed and commenced operation prior to July 1, 2002.”
12. Section 5.0 of Rule 4693 requires that “no person shall operate ... [an] existing bakery unless the following standards are met:
 - a) The collected emissions are vented to an approved emission collection system.
 - b) The collected emissions are vented to an approved emission control device, which has a control efficiency of at least 95 percent”

FINDINGS OF FACT

13. The Facility is a commercial bakery facility located at 1831 S. Stockton Street, Lodi, California. The Facility has existed at this location since at least 1997. The Facility is capable of operating 24 hours per day, 7 days per week, 52 weeks per year.
14. Until November 2006, the Facility was owned by the Knutson Family Trust and several charitable organizations. In November 2006, ownership and operation of the Facility was transferred to Ralcorp Holdings, Inc. Currently, the Facility is owned and operated by Ralcorp Frozen Bakery Products, Inc. (“RFBP”), a division of Ralcorp Holdings, Inc.
15. The Facility operates “bakery ovens” as that term is defined in Rule 4693 and permitted in Condition 10 of District permit N-1933-4-1.

16. On or about August 12, 2009, RFBP submitted an application for a permit to operate to the District (“Permit Application”).
17. RFBP’s Permit Application stated that the Facility operates three natural gas fired bakery ovens, one cake oven, and a boiler rated at 4.95 MMBtu.
18. RFBP’s Permit Application states that the Facility makes baked breads. The bread dough uses yeast for sandwich bread and levain for artisan breads. VOCs are emitted when the bread is baked.
19. RFBP’s Permit Application states that the Facility’s potential to emit VOCs is 124.4 tpy. RFBP’s Permit Application also states that the Facility emitted 31.24 tons of VOCs in 2008 from the bread products.
20. RFBP’s Permit Application states that the Facility has no air pollution controls.
21. EPA inspected the Facility on July 27, 2009. EPA’s inspection included a comprehensive walk-through of the Facility, accompanied by Facility employees, for the purpose of familiarizing EPA enforcement personnel with the Facility’s processes and equipment.
22. EPA’s inspectors were shown and observed the Facility’s bakery ovens. Based on their visual observations, EPA’s inspectors were able to determine that emissions from the Facility’s “bakery ovens” are not vented to an approved emission control device.

FINDING OF VIOLATION

Finding of Failure to Comply with Rule 4693

23. The Facility is a major source of air pollution, as that term is defined in SJVAPCD Rules 2201 and 4693 because it has the potential to emit more than the 50,000 pounds per year of VOCs.
24. The Facility is subject to the requirements of Rule 4693 because it is a major source operating a bakery oven.
25. The Facility has been in violation of Rule 4693 since at least April 26, 2004, because it does not vent emissions from the bakery ovens to approved emission control devices.

26. The Facility remains and will continue to be in violation of Rule 4693 until it properly vents emissions from the bakery ovens to approved emission control devices.

NOTICE OF VIOLATION

Notice is given to Cottage Bakery, Inc. that the Administrator of the United States Environmental Protection Agency, by authority duly delegated to the undersigned, finds that Cottage Bakery, Inc. is in violation of section 110 of the Act, the California SIP, and SJVAPCD Rule 4693, as set forth in the Finding of Violation.

ENFORCEMENT

Section 113(a)(1) of the Act provides that when any person has violated any requirement or prohibition of an applicable implementation plan or permit, EPA may:

- issue an order requiring compliance with the requirements or prohibition of such implementation plan or permit, or
- issue an administrative penalty order pursuant to section 113(d) for civil administrative penalties of up to \$37,500 per day of violation, or
- bring a civil action pursuant to section 113(b) for injunctive relief and/or civil penalties of not more than \$37,500 per day for each violation.

Furthermore, if a person knowingly violates any requirements of an applicable implementation plan more than 30 days after notification of violation, section 113(c) provides for criminal penalties or imprisonment, or both.

Under section 306(a) of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violations of the Act may result in the facility being declared ineligible for participation in any federal contract, grant, or loan.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that the Administrator or the court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113(e)(2) of the Act allows the Administrator or the court to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this NOV, the days of violation shall be presumed to include the date of this NOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.


OPPORTUNITY FOR CONFERENCE

Cottage Bakery may, upon request, confer with EPA. The conference will enable Cottage Bakery to present evidence bearing on the finding of violation, the nature of the violation, and any efforts it may have taken or proposes to take to achieve compliance. Cottage Bakery has the right to be represented by counsel. A request for a conference with EPA must be made within ten (10) working days of receipt of

this NOV. The request for a conference or other inquiries concerning the NOV should be made in writing to:

Kara Christenson
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3881

9-10-09
Date



Deborah Jordan
Director, Air Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of:)	Docket No. R9-09-19
)	
)	Finding and Notice of Violation
Cottage Bakery, Inc.)	
Lodi, California)	
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Proceeding Under Section 113(a),)	
<u>Clean Air Act, As Amended</u>)	

This Finding and Notice of Violation (“NOV”) is issued to Cottage Bakery, Inc. (“Cottage Bakery”) for violations of the Clean Air Act (“CAA” or “Act”) as amended, 42 U.S.C. §§ 7401-7671q, at its manufacturing facility located in Lodi (San Joaquin County), California (the “Facility”). The Facility is located within the jurisdiction of the San Joaquin Valley Air Pollution Control District (“SJVAPCD” or “District”). Section 113(a)(1) of the Act requires the EPA Administrator to notify a person in violation of a state implementation plan. The authority to issue NOV’s has been delegated to the Director of the Air Division for EPA, Region IX.

GENERAL STATUTORY AND REGULATORY BACKGROUND

1. Section 110(a) of the Act requires that all states adopt state implementation plans (“SIPs”) that provide for the implementation, maintenance and enforcement of primary and secondary air quality standards. 42 U.S.C. §7410(a).
2. The Facility is located within the jurisdiction of the San Joaquin Valley Air Pollution Control District (“SJVAPCD” or “District”).

3. A person's failure to comply with any approved regulatory provision of a SIP renders the person subject to enforcement under section 113 of the Act. 42 U.S.C. §7413(a)(1); 40 C.F.R. §52.23.

SJVAPCD Rule 2010 Permits Required

4. In accordance with section 110 of the Act, EPA has approved Rule 2010 ("Permits Required"), as adopted on December 17, 1992, into SJVAPCD's portion of the California SIP. 64 Fed. Reg. 39920 (July 23, 1999).
5. Section 3.0 of Rule 2010 requires any person installing equipment that emits air contaminants to first obtain an Authority to Construct ("ATC") permit from the District.
6. Section 4.0 of Rule 2010 requires any person operating equipment that emits air contaminants to first obtain a Permit to Operate ("PTO") from the District.

SJVAPCD Rule 2201 New and Modified Stationary Source Review Rule

7. In accordance with section 110 of the Act, EPA has approved Rule 2201 ("New and Modified Stationary Source Review Rule"), as adopted on December 19, 2002, into SJVAPCD's portion of the California SIP. 69 Fed. Reg. 27837 (May 17, 2004).
8. Section 4.0 of Rule 2201 requires "Best Available Control Technology" ("BACT"), on a pollutant-by-pollutant and emissions unit-by-emissions unit basis, for "a new emissions unit with a potential to emit greater than 2.0 pounds per day."
9. Section 3.9 of Rule 2201 defines BACT as the most stringent emission limitation or control technique that has been achieved in practice or required by any SIP for the same class or category as the source.
10. Section 4.5.3 of Rule 2201 requires offsets, on a pollutant-by-pollutant and emissions unit-by-emissions unit basis, for facility modifications that increase VOC emissions by more than 20,000 pounds per year.

FINDINGS OF FACT

11. The Facility is a commercial bakery facility located at 1831 S. Stockton Street, Lodi, California. The Facility has existed at this location since at least 1997. The Facility is capable of operating 24 hours per day, 7 days per week, 52 weeks per year.
12. Until November 2006, the Facility was owned by the Knutson Family Trust and several charitable organizations. In November 2006, ownership and operation of the Facility was transferred to Ralcorp Holdings, Inc. Currently, the Facility is owned and operated by Ralcorp Frozen Bakery Products, Inc. ("RFBP"), a division of Ralcorp Holdings, Inc.
13. Pursuant to its authority under section 114 of the Act, EPA sent a letter dated April 20, 2009 to Ralcorp Holdings, Inc. requesting information regarding the Facility's compliance with the Act.
14. On or about June 24, 2009, Ralcorp submitted its response to EPA's section 114 information request ("Response to EPA's Information Request"). Ralcorp's Response to EPA's Information Request included a document entitled, "Cottage Bakery, Lodi, California, List of Flavorings."
15. On or about August 12, 2009, RFBP submitted an application for a permit to operate to the District ("Permit Application"). RFBP's Permit Application stated that the Facility operates three natural gas-fired baking ovens ("Baking Ovens") and natural gas-fired cake oven ("Cake Oven").¹
16. RFBP's Permit Application states that the Facility makes baked breads and cakes. The Baking Ovens emit VOCs as a result of the use of yeast and / or levain as leavening agents. The Cake Oven emits VOCs as a result of the use of flavorings that contain ethanol, and propylene glycol.²
17. Ralcorp's Response to EPA's Information Request and RFBP's Permit Application contain information relevant to the year of installation and PTE for VOCs of the ovens:

1 The Facility also has one boiler (rated at 4.95 MMBtu) for which RFBP submitted a form entitled, "Supplemental Application for Permit-Exempt Equipment Registration for Rule 4307 Units."

2 The ovens also emit small amounts of VOCs as the result of the combustion of natural gas.

EMISSION UNIT	YEAR INSTALLED	PTE VOCs
Baking Oven #1	1997	31.00 tons per year
Baking Oven #2	2003	46.56 tons per year
Baking Oven #3	2006	46.56 tons per year
Cake Oven	1997	7.73 pounds per day

18. RFBP's Permit Application states that the Facility's potential to emit VOCs is 124.4 tpy. RFBP's

Permit Application also states that the Facility emitted 31.24 tons of VOCs in 2008.

19. RFBP's Permit Application states that the Facility has no permitted emission units.

20. RFBP's Permit Application states that the Facility has no air pollution controls.

FINDING OF VIOLATION

Finding of Failure to Comply with Rule 2010

21. The Facility is in violation of Sections 3.0 and 4.0 of Rule 2010 because it failed to comply with Rule 2010's requirements to obtain ATCs and PTOs when it installed and operated equipment that emits air contaminants. Specifically, the Facility violated Sections 3.0 and 4.0 of Rule 2010 when it installed and commenced operation of the Baking Ovens in 1997, 2003, and 2006 and the Cake Oven in 1997.
22. The Facility remains and will continue to be in violation of Rule 2010 until it obtains valid permits for the ovens.

Finding of Failure to Comply with Rule 2201

23. The Facility is in violation of Section 4.0 of Rule 2201 because it failed to comply with Rule 2201's BACT requirements when it installed new emissions units with the potential to emit more than 2.0 pounds per day. Specifically, the Facility triggered Rule 2201's BACT requirement when it installed each oven in 1997, 2003, and 2006.

24. The Facility is in violation of Section 4.5.3 of Rule 2201 because it failed to obtain offsets when it installed each oven in 1997, 2003, and 2006 with a post-project PTE above 20,000 pounds per year.
25. The Facility remains and will continue to be in violation of Rule 2201 until it installs and operates BACT and obtains offsets and valid permits for the ovens.

NOTICE OF VIOLATION

Notice is given to Cottage Bakery, Inc. that the Administrator of the United States Environmental Protection Agency, by authority duly delegated to the undersigned, finds that Cottage Bakery, Inc. is in violation of section 110 of the Act, the California SIP, and SJVAPCD Rules 2010 and 2201, as set forth in the Finding of Violation.

ENFORCEMENT

Section 113(a)(1) of the Act provides that when any person has violated any requirement or prohibition of an applicable implementation plan or permit, EPA may:

- issue an order requiring compliance with the requirements or prohibition of such implementation plan or permit, or
- issue an administrative penalty order pursuant to section 113(d) for civil administrative penalties of up to \$37,500 per day of violation, or
- bring a civil action pursuant to section 113(b) for injunctive relief and/or civil penalties of not more than \$37,500 per day for each violation.

Furthermore, if a person knowingly violates any requirements of an applicable implementation plan more than 30 days after notification of violation, section 113(c) provides for criminal penalties or imprisonment, or both.

Under section 306(a) of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violations of the Act may result in

the facility being declared ineligible for participation in any federal contract, grant, or loan.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that the Administrator or the court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113(e)(2) of the Act allows the Administrator or the court to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this NOV, the days of violation shall be presumed to include the date of this NOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

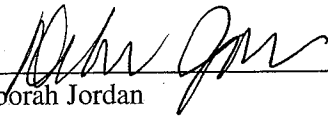
Cottage Bakery may, upon request, confer with EPA. The conference will enable Cottage Bakery to present evidence bearing on the finding of violation, the nature of the violation, and any efforts it may have taken or proposes to take to achieve compliance. Cottage Bakery has the right to be represented by counsel. A request for a conference with EPA must be made within ten (10) working days of receipt of

this NOV. The request for a conference or other inquiries concerning the NOV should be made in writing

to:

Kara Christenson
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3881

9-10-09
Date


Deborah Jordan
Director, Air Division